

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554
January 3, 2003

In Reply Refer To:
1800B3-GDG

Paul H. Brown, Esq.
Wood, Maines & Brown
1827 Jefferson Place, N.W.
Washington, D.C. 20036

In re: KTMN(FM) Cloudcroft, NM
File No. BLH-20010924AAM
Silent Since: 11/7/2001
Facility No. 89049

Dear Mr. Brown:

This letter concerns: (1) A-O Broadcasting Corporation's ("A-O") referenced license to serve Cloudcroft, New Mexico on Channel 250C1 (97.9 MHz), and (2) your letter dated November 21, 2002, regarding the station's operational status.

The station suspended operations on November 7, 2001, due to a computer failure. Thereafter, the Enforcement Bureau's Denver field office determined that KTMN's transmitting antenna on a U.S. Forest Service ("USFS") lookout tower created a risk of excessive RF exposure. The USFS requested that the transmitter be removed, and A-O sought to relocate the KTMN(FM) transmission facilities.¹ On June 25, 2002, the staff approved A-O's request to remain silent while it negotiated for a new site location.² A-O applied to modify its license on August 22, 2002, and we granted that application to relocate KTMN's site to a new 60-meter tower at the Wofford Electronics Site in Otero County, New Mexico, on September 30, 2002. A-O has not submitted a license application to indicate that the station returned to the air by November 7, 2002, with its modified facilities. It also did not seek special temporary authority to return to the air with other facilities.

As you are aware, Section 312(g) of the Communications Act, 47 U.S.C. § 312(g), provides that "if a broadcasting station fails to transmit broadcast signals for any consecutive 12-month period, then the station license granted for the operation of that

¹See *A-O Broadcasting Corp., Notice of Apparent Liability*, FCC 02-312, __ FCC Rcd __ (rel. Nov. 18, 2002).

²*Letter to Paul H. Brown, Esq.*, Ref. 1800B3-GDG (Aud. Div., June 25, 2002).

broadcast station expires at the end of that period, notwithstanding any provision, term, or condition of the license to the contrary."³

Your most recent letter states that KTMN returned to the air from unspecified facilities for a brief period of signal tests on November 7, 2002 and conducted tests intermittently since that date. The Communications Act defines "broadcasting" as "the dissemination of radio signals intended to be received by the public or by the intermediary of relay stations."⁴ There is no indication in your correspondence that A-O's November 7, 2002, efforts were intended for public listening, or that these "tests" were anything more than transmissions utilized solely by the licensee to determine the station's technical performance. In similar circumstances, broadcast licenses have been forfeited pursuant to 47 U.S.C. § 312(g).⁵

Accordingly, the Commission's public and internal databases will be modified to indicate that KTMN's broadcast license (File No. BLH-20010924AAM) EXPIRED as a matter of law as of 12:01 a.m., November 8, 2002, and was thereby forfeited. Consequently, we delete from our databases the station's call sign KTMN(FM).⁶

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

³See *Implementation of Section 403(l) of the Telecommunications Act of 1996 (Silent Station Authorizations)*, 11 FCC Rcd 16599 (1996) ("Implementation Order"); see also 47 C.F.R. § 73.1740(c).

⁴See 47 U.S.C. § 153(6).

⁵See *Letter to Carlos J. Lastra* (Vid. Div., Sep. 14, 1999), *recon. den.*, *Letter to John A. Borsari, Esq.* (Vid. Div., Nov. 14, 2000), *rev. den.*, *Carlos J. Lastra, Trustee*, 16 FCC Rcd 17268 (2001), *aff'd sub nom. Aerco Broadcasting Corporation v. FCC*, Case No. 01-1466 (D.C. Cir., Nov. 21, 2002) (station license automatically forfeited for 12-month period of inactivity ending February 9 despite transmission of a test pattern on February 7). See also *Letter to Tech Educational Radio Council (KTEQ)*, Reference 1800B3-GDG (Aud. Div., Dec. 18, 2001) (classroom experiment on licensed frequency does not constitute broadcast operations).

⁶A-O's associated construction permit (File No. BPH-20020822AAC, granted Sep. 30, 2002) consequently becomes null and void because there can be no continued authority absent a valid station license. *Implementation Order*, 11 FCC Rcd at 16601.